

Message Text

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ORIGIN EB-08

INFO OCT-01 EA-10 ISO-00 OMB-01 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 SS-15
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FM SECSTATE WASHDC

TO AMEMBASSY CANBERRA

INFO AMEMBASSY WELLINGTON

C O N F I D E N T I A L STATE 094269

E.O. 11652: GDS

TAGS: EAIR, AS

SUBJECT: CIVIL AVIATION NEGOTIATIONS AS A POLITICAL ISSUE
TWEEN THE US AND GOA

REF: CANBERRA 2681

1. IF AUSTRALIANS AGAIN RAISE QUESTION OF PRESIDENT'S
LETTER APPROVING CONTINENTAL ROUTE AWARD, EMBASSY SHOULD
EXPLAIN THAT PURPOSE OF STATEMENT THAT THERE ARE "NO
SUBSTANTIAL FOREIGN POLICY CONSIDERATIONS" WAS TO PERMIT
COURT CHALLENGE (IF ANYONE CHOSE TO DO SO) OF CAB DECISION
WITHOUT DEFENSE BEING RAISED THAT PRESIDENTIAL DECISIONS
ARE NOT SUBJECT TO REVIEW BY COURTS UNDER SO-CALLED
WATERMANN DOCTRINE. SECTION 3(B) OF EXECUTIVE ORDER 11920
OF JUNE 10, 1976, IS PERTINENT TO THIS LEGAL ISSUE. IT
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READS AS FOLLOWS:

"3(B) ORDERS INVOLVING FOREIGN AND OVERSEAS AIR TRANSPOR-
TATION CERTIFICATES OF US CARRIERS THAT ARE SUBJECT TO THE
APPROVAL OF THE PRESIDENT ARE NOT SUBJECT TO JUDICIAL
REVIEW WHEN THE PRESIDENT APPROVES OR DISAPPROVES AN ORDER
FOR REASONS OF DEFENSE OR FOREIGN POLICY. ALL DISAPPROVALS

NECESSARILY ARE BASED ON SUCH A PRESIDENTIAL DECISION, BUT
APPROVAL BY THE PRESIDENT DOES NOT NECESSARILY IMPLY THE

EXISTENCE OF ANY DEFENSE OR FOREIGN POLICY REASON. FOR
THE PURPOSE OF ASSURING WHATEVER OPPORTUNITY IS AVAILABLE
UNDER THE LAW FOR JUDICIAL REVIEW OF THE CAB DECISIONS,
ALL DEPARTMENTS AND AGENCIES WHICH MAKE RECOMMENDATIONS TO
THE PRESIDENT PURSUANT TO SECTION 801 SHOULD INDICATE
SEPARATELY WHETHER, AND WHY, IF THE ORDER OR ANY PORTION
OF THE ORDER IS APPROVED, THE PRESIDENT CANNOT STATE IN HIS
APPROVAL THAT NO DEFENSE OR FOREIGN POLICY REASON UNDERLIES
HIS ACTION."

2. DEPARTMENT APPRECIATES THAT THIS LEGAL POINT MAY NOT
FULLY ANSWER GOA'S CONCERN, BUT IT DOES DEMONSTRATE THAT
STATEMENT IN QUESTION WAS MADE FOR DOMESTIC LEGAL REASONS.
CHRISTOPHER

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NNN

Message Attributes

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Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Drafter: MHSTYLES:VLV
Enclosure: n/a
Executive Order: GS
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Format: TEL
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Handling Restrictions: n/a
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ISecure: 1
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Original Classification: CONFIDENTIAL
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Original Previous Handling Restrictions: n/a
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Previous Handling Restrictions: n/a
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Review Exemptions: n/a
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